IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

MFA.No. 418 of 1996(A)

OP.MV.1288/1992 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY

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APPELLANT: PETITIONER:

KOOVAN SHABEELA, D/O.K.N.MOHAMMAD,
(MINOR 6 YEARS) THROUGH GUARDIAN
K.N.MOHAMMAD, S/O.ABOO, KAKKOTTAKATH
NADUVILE PURAYIL, TALIPARAMBA AMSOM,
P.O. TALIPARAMBA.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: RESPONDENTS:

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1. K.POKKER, S/O.MOHAMMAD, KUNIYIL HOUSE,
SREEKANDAPURAM AMSOM, P.O.SREEKANDAPURAM.

2. SUVARNAN, S/O.KUNHAMBU, INDIYIL HOUSE,
KOLMOTTA, ANDOOR AMSOM, P.O.PARASSINIKKADAVU. (**DELETED**)

(R2 IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
8.8.2007 IN I.A.No.1667/2007, AT THE RISK OF THE APPELLANT)

3. THE ORIENTAL INSURANCE COMPANY LIMITED
NATIONAL HIGH WAY, TALIPARAMBA.

BY ADV. SRI.M.JACOB MURICKAN, SC FOR INSURANCE COMPANY (R3)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, HE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 418 of 1996

Dated this the 7th September, 2007.

J U D G M E N T

A five year old girl, who sustained injury on her right foot, is the appellant. She was represented by her father as next friend. The case of the appellant was that at about 9.40 a.m. On 9.7.92, while she was proceeding to her school along with her father, a jeep bearing Registration No.KLD 8831, owned by the first respondent and driven by the second respondent, in a rash or negligent manner, ran over her right foot, causing very serious injuries. She claimed a compensation of Rupees One Lakh. The Tribunal awarded an amount of Rs.25,000/= as compensation. Challenging that quantum of compensation, petitioner herself has filed this appeal.

2. The owner and driver of the jeep did not contest. The Insurer alone contested the matter. The Tribunal found that the accident occurred due to the negligence of the driver of the jeep. It also found that the appellant was entitled to get compensation. It was also found that the vehicle was covered with a valid policy of

insurance, and hence, the 3rd respondent Insurer is liable to deposit the amount. So, the only question arising for consideration in this appeal is whether the appellant is entitled to get any additional compensation.

3. The learned counsel appearing for the appellant has aruged that the Tribunal itself had occasion to see the victim and the Tribunal had recorded that there was extensive scarring and the girl was having restriction of movements of right ankle and first meta-tarsal phalangel joint. The Tribunal had noted that on physical verification, it was found that the observations made by the Doctor in Ext.A7 were correct. But the compensation awarded appear to be highly inadequate.

4. The learned counsel appearing for the appellant has filed I.A.No.1967/2007 to admit additional documents. It was averred that even in 2005, the appellant underwent corrective operations, and in the year 2006, she underwent corrective Osteotomy and spend huge amount. These documents came into existence long after the filing of the appeal. The Tribunal did not awarded any amount for

disability, on the ground that the appellant was not an earning member. Though the certificate shows that there was 25% functional disability, the Tribunal found that it can only be less than 10%. Considering all the aspects of the matter, I am of the view that it is only just and proper that the appellant be given a reasonable opportunity to adduce further evidence, in support of her claim for compensation. For that limited purpose, the matter has to go back.

5. In the result, the appeal is allowed in part. The finding of the Tribunal that the accident occurred due to the negligence of the driver of the jeep, the appellant is entitled to get compensation, and also that the Insurer is liable to indemnify the Insurer are confirmed. The matter is remanded only for the purpose of re-considering the quantum of compensation claimed by the appellant. It is open to the appellant to take back documents that she has produced before this Court, and to produce the same before the Tribunal. In case the appellant files an application for amendment of the original petition, the court below shall consider the same, and dispose of the same, in accordance with law.

Parties are directed to appear before the Motor Accidents Claims Tribunal, Thalassery, on 17.10.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.418 of 1996

J U D G M E N T

Dated: 7th September, 2007.